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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 UNITED STATES OF AMERICA,

4 v. 18 CR 262 (VEC)
5 ARMANDO GOMEZ AND FABIO SIMON Telephone Conference
YOUNES ARBOLEDA,

6 Defendants.
7 -----x

8 New York, N.Y.
9 December 4, 2020
10 2:00 p.m.

11 Before:

12 HON. VALERIE E. CAPRONI,

13 District Judge

14 APPEARANCES

15 AUDREY STRAUSS,
16 Acting United States Attorney for the
Southern District of New York
17 MATTHEW LAROCHE
Assistant United States Attorney

18 MARGARET M. SHALLEY
19 Attorney for Defendant Gomez

20 DONALD YANNELLA
21 Attorney for Defendant Younes Arboleda

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(The Court and all parties appearing telephonically)

THE COURT: Let me remind you all of the rules of a telephone conference: Please identify yourself each time before you speak. When you hear the bell that indicates someone has come or left, please stop talking long enough for me to make sure that the court reporter is on the line. And if you're in an area where there's ambient noise, please mute your phone when you're not speaking.

So, first, let me start by making sure: I think we've got letters to this effect, but, Mr. Yannella, are you waiving your client's presence for purposes of this conference?

MR. YANNELLA: Yes.

THE COURT: How about you, Ms. Shalley?

MR. SHALLEY: Yes, your Honor.

THE COURT: Okay.

Mr. Laroche, we've still got one defendant at large; is that correct?

MR. LAROCHE: That's correct, your Honor.

THE COURT: Is he being actively looked for?

MR. LAROCHE: Your Honor, we sent an extradition package to Colombia immediately after the indictment in this case. That defendant, Jesus Santrich, was detained at the time by the Colombians. The Colombians ended up releasing him, and, at this point, our understanding is that he's located somewhere along the Colombian and Venezuelan border. So we're taking all

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1 active steps to try to apprehend him, but, at this point, I
2 don't have another update as to his status.

3 THE COURT: Okay.

4 What's the status of discovery, Mr. Laroche?

5 MR. LAROCHE: Yes, your Honor.

6 With respect to both defendants, we are substantially
7 complete with discovery except for one bit of forensics. So
8 the discovery that is complete at this point includes: All
9 audio and video recordings taken by the confidential sources,
10 which is the core of the case; draft translations related to
11 those recordings; materials from an MLAT; some DA reports and
12 lab reports and other forensics reports.

13 There is the one exception that I mentioned, which we
14 believe will be resolved by next week, that has to do with
15 forensic devices that were seized in Columbia pursuant to
16 search warrant. Those devices are located in Miami. We've
17 been working with the agents to get copies of those devices up
18 here for production. As of today, I believe the agents have
19 said those devices are on their way via mail, the actual
20 extractions to those devices. So we expect that those will be
21 produced over to defense counsel by next week.

22 THE COURT: Okay.

23 How are the defendants doing on access to the
24 discovery and their ability to review it?

25 Mr. Yannella?

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1 MR. YANNELLA: Your Honor, my client has not yet
2 received the discovery in the jail, I don't believe. And I
3 wanted to raise this issue, your Honor, because I'm concerned,
4 from past experience, that there might be some difficulty in
5 playing these recordings on the computer in the Westchester
6 County Jail. Maybe the prosecutors can speak more fully to
7 that and tell us whether a discovery coordinator might be
8 appropriate for the purpose of converting these calls into a
9 format that can be played on the computers in the jail.

10 THE COURT: Okay. Tell you what, that sounds like the
11 sort of conversation that you need to have with each other and
12 let me know if there's a problem and there's something that I
13 need to do. But, just generally, has the discovery been
14 provided to the Westchester County Jail?

15 MR. LAROCHE: It has not yet --

16 THE COURT: That was Mr. Laroche, right?

17 MR. LAROCHE: Yes. I'm sorry, your Honor.

18 THE COURT: Okay.

19 When do you expect to get it up to the Westchester
20 County Jail?

21 MR. LAROCHE: We expect it to be there sometime early
22 next week.

23 THE COURT: Okay.

24 So talk to each other about whether there are going to
25 be any difficulties, after the client gets the information,

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1 with him being able to actually review it up there. If there's
2 a problem, let me know. And, Mr. Yannella, let me know sooner
3 rather than later, and preferably with a proposed resolution to
4 the problems that your client is having.

5 MR. YANNELLA: Yes, your Honor. We didn't mean to
6 just present it to you in the first instance. I had already
7 exchanged some emails in the background about this. But we
8 will look into it, and if we're asking you to do something, we
9 will propose a resolution. Thank you.

10 THE COURT: Okay, okay, terrific.

11 And, Ms. Shalley, where is your client?

12 MR. SHALLEY: He's in Valhalla also.

13 THE COURT: Okay. And how is he doing? Does he have
14 the discovery?

15 MR. SHALLEY: He does have the discovery. I believe
16 he got it at the end of the summer, approximately mid-August.
17 He's been reviewing it. He hasn't said that there's been a
18 problem with the recordings, but the problem we're having is,
19 he's reviewing the discovery.

20 The problem we're having is more that, with the
21 videoconferences with Valhalla, you can only have one person on
22 the video, so the interpreter has been on a phone and Mr. Gomez
23 is just having a really hard time hearing, which I think
24 partially is because he has a hearing problem – he's in his
25 mid-seventies – and partially because of the setup.

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1 So, based upon letters that Mr. Yannella wrote and
2 that I then basically copied, I also wrote a letter to the
3 warden asking if it was possible for us to do phone calls where
4 he could call me without the calls being monitored, with an
5 interpreter, because that would make it a hundred times easier
6 to go through the information with him. I've called the warden
7 three or four times over the past two weeks. He hasn't called
8 me back yet, but I'm hoping that that works out because that
9 would make it a lot easier to review.

10 The additional discovery that's coming up from Florida
11 is, I believe, two laptops and three cell phones. They did
12 belong to Mr. Gomez, so I believe most of that discovery is
13 going to relate to him.

14 THE COURT: Okay.

15 So, Mr. Laroche, can you intervene with the Valhalla
16 facility to make sure that this problem gets worked through, so
17 that the attorneys can actually have a meaningful ability to
18 communicate with their clients?

19 MR. LAROCHE: Yes, your Honor.

20 THE COURT: Okay.

21 If that doesn't work, Mr. Yannella and Ms. Shalley,
22 both of you, if this doesn't get worked out in the next couple
23 of weeks, let me know because one way to work it through is
24 just to enter an order. I presume that the warden would comply
25 with my order, but I'd prefer not to do that; I'd prefer for

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1 this to get worked out in the ordinary course so that you can
2 have a meaningful ability to communicate with your clients.

3 So --

4 MR. YANNELLA: Judge?

5 THE COURT: Yes. Mr. Yannella?

6 MR. YANNELLA: Yes, Donald Yannella.

7 If I may interject, I have made some progress along
8 these lines. I won't put it on the record right now, but I'll
9 share the information and the contact information with
10 Ms. Shalley and the prosecutors.

11 THE COURT: Terrific, I like good news, Mr. Yannella,
12 particularly on a Friday afternoon.

13 MR. YANNELLA: Okay.

14 THE COURT: So, all things being considered,
15 considering the fact that Mr. Yannella is new to the case,
16 there still is a substantial amount of discovery that needs to
17 be reviewed, et cetera, and given the fact that it seems
18 unlikely that we're going to have any meaningful number of
19 trials in the early part of next year, my inclination is to set
20 a status conference maybe in late March, in the hopes that by
21 that point we have a better sense of when we're going to be
22 somewhere back to normal in terms of trial schedules, and then
23 set a trial schedule at that point. And by that point also, we
24 may know whether the last defendant, the guy who's on the
25 Venezuela-Colombian border, is going to be joining us in this

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1 case or not.

2 So, is there any objection to that as a way of
3 proceeding? Mr. Laroche?

4 MR. LAROCHE: No, your Honor. Thank you.

5 THE COURT: Ms. Shalley?

6 MR. SHALLEY: No, your Honor. Thank you.

7 THE COURT: Mr. Yannella?

8 Mr. Yannella?

9 MR. YANNELLA: No, your Honor. I'm sorry, I had it on
10 mute.

11 THE COURT: That's okay.

12 MR. YANNELLA: No, your Honor.

13 THE COURT: So I'm going to exclude time until our
14 next status conference, which I will set for March the 30th.
15 Actually, let's do it on April 2nd. April 2nd at 2:30.

16 And assuming that we are in a better place with COVID
17 by that point, so that there is at the end of that tunnel not a
18 freight train coming our way but instead hope of actually
19 normal trials, my plan would be to set a trial schedule at that
20 point.

21 Okay? Anything further from the government,
22 Mr. Laroche?

23 MR. LAROCHE: No, your Honor.

24 THE COURT: Ms. Shalley?

25 MR. SHALLEY: No, your Honor.

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1 THE COURT: Mr. Yannella?

2 MR. YANNELLA: Nothing further, your Honor.

3 THE COURT: All right. Thanks, everybody. Have a
4 wonderful weekend.

5 MR. LAROCHE: Thank you. You too.

6 MR. SHALLEY: Have a nice weekend.

7 MR. YANNELLA: Thank you.

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